

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

GENE CAMARATA,

Plaintiff,

v.

KITTITAS COUNTY, CITY OF  
ELLENSBURG, KITTITAS COUNTY  
FAIR BOARD, INC., ELLENSBURG  
RODEO ASSOCIATION, d/b/a/  
ELLENSBURG RODEO and  
ELLENSBURG RODEO BOARD OF  
DIRECTORS, et al.,

Defendants.

NO. CV-03-3114-LRS

**ORDER GRANTING MOTION TO  
DISMISS**

BEFORE THE COURT without oral argument are the defendants' five motions for summary dismissal of the case: Individual Ellensburg Defendants'<sup>1</sup> Motion for Summary Judgment and Dismissal (Ct. Rec. 23), Individual Kittitas County Defendants'<sup>2</sup> Motion for Summary Judgment (Ct.

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<sup>1</sup> "Individual Ellensburg Defendants" are: David Moseley , Paul - Sullivan , Ted Barkley , Ann Kirkpatrick , Bob Richey , Officer Green , Officer Roe , Officer Matthews , Officer Houck , Officer Coppin , Officer Bender , Officer Dobbs , Officer Jones , Officer McElroy , Officer Ng , Officer Luvera , Officer Brunk , Officer Willis , Officer Parmeter , Officer Hansberry , Paula Hake , Steve Alder , Al Nielsen , and R James Pidduck

<sup>2</sup> "Individual Kittitas County Defendants'" are: Greg Zempel , James Hurson , John MacRae , Bruce Coe , and Mark Johnson.

1 Rec. 28), Kittitas County Defendants'<sup>3</sup> Motion to Dismiss for Plaintiff's  
2 Failure to Comply with Court Order Regarding Discovery (Ct. Rec. 32),  
3 Kittitas County Defendants' Motion for Summary Judgment (Ct. Rec. 36),  
4 and Defendant City of Ellensburg's Motion for Summary Judgment and  
5 Dismissal (Ct. Rec. 40). The Ellensburg defendants have joined in the  
6 County's Motion to Dismiss for Failure to Comply with Court Order  
7 Regarding Discovery and the Kittitas County defendants have joined in the  
8 City of Ellensburg's Motion for Summary Judgment. Plaintiff has filed  
9 no response to these motions. For the following reasons, the Court  
10 grants the defendants' motion to dismiss.

#### 11 **I. BACKGROUND**

12 Plaintiff commenced this civil rights action as a pro se litigant  
13 by complaint filed in Kittitas County Superior Court on August 11, 2003.  
14 Defendants removed the case to federal Court on September 10, 2003. On  
15 April 26, 2004 the Court entered a scheduling order which spelled out,  
16 in detail, the deadlines and general discovery requirements, including  
17 the requirement that all discovery be completed by January 24, 2005. On  
18 May 19, 2004, the Kittitas County defendants served Plaintiff their First  
19 Set of Interrogatories and Requests for Production of Documents. Having  
20 failed to receive a response by August 16, 2004, the defendants sent  
21 follow-up letters and attempted phone contact, to no avail. Plaintiff  
22 then failed to respond to defendant's motion to compel.  
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25 <sup>3</sup> "Kittitas County Defendants" are: Kittitas County , Kittitas  
26 County Fair Board Inc, Kittitas County Rodeo Grounds Improvement Fund,  
and the Individual Kittitas County Defendants - Greg Zempel , James  
Hurson, John MacRae, Bruce Coe, and Mark Johnson.

1 On December 27, 2005, the Court entered an Order compelling the  
2 plaintiff provide written discovery by January 10, 2005. Along with a  
3 detailed explanation of the legal basis therefore and the reasons why,  
4 the Court's order provided the following warning:

5 "PLAINTIFF'S FAILURE TO COMPLY WITH THIS ORDER WILL LIKELY RESULT IN  
6 THE DISMISSAL OF THIS CASE WITH PREJUDICE."

7 Defendants represent in their motion to dismiss that plaintiff never  
8 complied with this order.  
9

## 10 **II. DISCUSSION**

11 The Court has authority to dismiss a case when a plaintiff does not  
12 comply with the rules or orders of the Court under Rule 41(b) of the  
13 Federal Rules of Civil Procedure which states:

14 For failure of the plaintiff to prosecute or to comply with these rules  
15 or any order of court, a defendant may move for dismissal of an action  
16 or of any claim against the defendant. Unless the court in its order  
of dismissal otherwise specifies, a dismissal under this subdivision  
... operates as an adjudication upon the merits.

17 Where it is determined that counsel or a party has acted willfully or  
18 in bad faith in failing to comply with rules of discovery or with Court  
19 orders enforcing the rules or in flagrant disregard of those rules or  
20 orders, it is within the discretion of the trial court to dismiss the  
21 action or to render judgment by default against the party responsible for  
22 noncompliance. Fed.R.Civ.P. 37(b); *G-K Properties v. Redevelopment*  
23 *Agency*, 577 F.2d 645, 647 (9th Cir. 1978). These measures are fully  
24 applicable to pro se litigants. *Jacobsen v. Filler*, 790 F.2d 1362,  
25 1364-65 (9th Cir.1986).  
26

1 Because dismissal is a severe penalty it should only be ordered in  
2 extreme circumstances. *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th  
3 Cir. 1986). The Ninth Circuit has identified five factors that should  
4 be considered in deciding whether to dismiss: "(1) the public's interest  
5 in expeditious resolution of litigation (2) the court's need to manage  
6 its dockets; (3) the risk of prejudice to the party seeking sanctions;  
7 (4) the public policy favoring disposition of cases on their merits; and  
8 (5) the availability of less drastic sanctions." *Porter v. Martinez*, 941  
9 F.2d 732, 733 (9th Cir.1991) (citations and internal punctuation  
10 omitted). In addition, dismissal is rarely appropriate if the court has  
11 not warned plaintiff that "dismissal is imminent." *Hamilton v. Neptune*  
12 *Orient Lines, Ltd.*, 811 F.2d 498, 500 (9th Cir.1987).

14 Dismissal of this case is appropriate as the plaintiff has repeatedly  
15 disobeyed the orders and rules of this Court. The interest of the  
16 public, the Court and the defendants in expeditiously handling litigation  
17 strongly favors dismissal of this case. Plaintiff has failed to  
18 participate in discovery. Despite the passage of an extraordinary amount  
19 of time, plaintiff's failure to participate in this lawsuit demonstrates  
20 that he is utterly unprepared to begin the trial which is presently  
21 scheduled to commence in one month. The public policy favoring decisions  
22 on the merits militates against dismissal. However, this factor is  
23 weakened by the Court's assessment of the merits of the case based on its  
24 review of defendants' motions for summary judgment. Plaintiff was  
25 adequately warned in this case. Despite this unambiguous warning,  
26

1 plaintiff did not comply with the Court's order. Finally, it is clear  
2 that less drastic sanctions are not appropriate.

3 Because he has repeatedly disobeyed the rules and orders of this Court,  
4 and for failure to prosecute his case

5 **IT IS HEREBY ORDERED THAT**

6 (1) The defendants' Motion to Dismiss for Failure to Comply with Court  
7 Order Regarding Discovery (Ct. Rec. 32), to which all defendants have  
8 joined, is **GRANTED**. All other pending motions are MOOT and not addressed  
9 on their merits.  
10

11 (2) This action is DISMISSED with prejudice and all scheduled  
12 hearings and the trial are vacated.

13 (3) The Clerk of the Court is directed to enter this order, enter  
14 judgment in accordance herewith, provide copies to the parties and CLOSE  
15 THE FILE.

16 DATED this 27<sup>th</sup> day of April, 2005.  
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18 s/Lonny R. Suko

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20 LONNY R. SUKO  
21 UNITED STATES DISTRICT JUDGE  
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